

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STANLEY LEON WADDELL)	
Petitioner,)	
)	1:12-CV-520
vs.)	1:05-CR-347-1
)	
UNITED STATES OF AMERICA)	
Respondent.)	

**MOTION TO WITHDRAW AS ATTORNEY OF RECORD
REGARDING SIMMONS APPOINTMENT**

COMES NOW Attorney Andrew McCoppin who asks this Court to permit him to withdraw as the Petitioner's attorney of record based upon the following:

1. On February 6, 2013, the court appointed Attorney McCoppin to represent the Petitioner for the purpose of determining whether the holding in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) would affect his sentence as a Career Offender.

2. "A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. §4B1.1(a).

3. *Simmons* identified certain North Carolina state felony convictions that are not "prior felony convictions" for federal sentencing purposes because a defendant convicted of those state felonies could not receive a sentence of more than one year in custody (depending

upon “the offense class, the offender’s prior record level, and the applicability of the aggravated sentencing range.”) 649 F.3d at 247 n.9

4. To determine the applicability of *Simmons* to the Petitioner’s alleged Career Offender status, Attorney McCoppin reviewed the Defendant’s Presentence Report and Judgment in this case. Attorney McCoppin also reviewed the North Carolina State Court judgments representing the basis for the federal district court’s determination that the Petitioner should be sentenced as a Career Offender.

5. Paragraph 26 of Petitioner’s Presentence Report identifies his 1992 conviction for Felony Sale or Delivery of Cocaine for which he was actually sentenced to 3 years imprisonment. U.S.S.G. §4B1.2(b) defines a “controlled substance offense” as an offense punishable by more than one year that prohibits the “distribution” of a controlled substance.

6. Consequently, *Simmons* may not disqualify Petitioner’s 1992 conviction for Felony Sale or Delivery of Cocaine as a prior felony conviction establishing Petitioner’s Career Offender status.

7. Paragraph 49 of Petitioner’s Presentence Report identifies his 2001 conviction for Felony Breaking and Entering for which he was actually sentenced to 15 to 18 months imprisonment. A conviction for breaking and entering is a predicate offense under the career offender guidelines. *United States v. Carr*, 426 Fed.Appx. 199, 2011 WL 1636946 (C.A.4 (N.C.))

8. Consequently, *Simmons* may not disqualify Petitioner’s 2001 conviction for Felony Breaking and Entering as a prior felony conviction establishing Petitioner’s Career Offender status.

9. In conclusion, *Simmons* may not affect the court's sentencing of Petitioner's as a Career Offender in this case.

10. Attorney McCoppin has informed Petitioner of the substance of this motion by telephone and has forwarded a copy this Motion to the Petitioner by U.S. Mail.

WHEREFORE, Attorney McCoppin requests the following:

1. That the Court find good cause to permit Attorney McCoppin to withdraw as the Petitioner's attorney of record regarding this *Simmons* appointment; and
2. That the Court enter an order allowing Attorney McCoppin to withdraw as the Defendant's attorney of record.

Respectfully submitted this 12th day of April, 2013.

McCoppin & Associates Attorneys at Law P.A.

/s/ Andrew McCoppin
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CERTIFICATE OF SERVICE

Today, I served a copy of the foregoing upon the United States by electronic filing with CM/ECF to the person identified below:

Mr. Harry L. Hobgood, Assistant for
The United States Attorney for the
Middle District of North Carolina

Respectfully submitted this 12th day of April, 2013.

McCoppin & Associates Attorneys at Law P.A.

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